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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

OTTER PRODUCTS, LLC,

Plaintiff,

v.

BLUE POINT SOLUTIONS NY LLC;
MATKAL LLC; YOSEF YOSSI ZAK-
LIKOWSKI; "JOHN DOES" 1-10; and
UNKNOWN ENTITIES 1-10;

Defendants.

BLUEPOINT SOLUTIONS NY LLC and
MATKAL LLC,

Counterclaim Plaintiff,

v.

OTTER PRODUCTS, LLC and TREEFOG
DEVELOPMENTS, INC., (d/b/a LIFEPROOF)

Counterclaim Defendants.

Case No. 18-cv-05969 (JFB)(GRB)

**OTTER PRODUCTS, LLC'S ANSWER
TO AMENDED COUNTERCLAIMS OF
DEFENDANTS BLUEPOINT
SOLUTIONS NY LLC, MATKAL LLC,
AND YOSEF YOSSI ZAKLIKOWSKI**

Plaintiff Otter Products, LLC (“Plaintiff”), through its attorneys for its Answer to the Amended Counterclaims of defendants, Bluepoint Solutions NY LLC, Matkal LLC, and Yosef Yossi Zaklikowski (hereinafter collectively referred to as “Defendants” or “Counterclaimants”) respectfully alleges as follows:

1. Paragraph 1 makes no formal allegations, to the extent that a response is required, Plaintiff denies all allegations contained herein.

2. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 and, therefore, denies such allegations.

3. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 3 and, therefore, denies such allegations.

4. Plaintiff admits the allegations contained in Paragraph 4.

5. As to Paragraph 5, Plaintiff denies that “LifeProof is a subsidiary of OtterBox, having been acquired by OtterBox in May 2013” and denies having knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 5 and, therefore, denies such allegations.

6. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 6 and, therefore, denies such allegations.

7. Plaintiff denies the allegations contained in Paragraph 7.

8. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8 and, therefore, denies such allegations.

9. As to Paragraph, 9, Plaintiff admits that Counterclaimants seek a declaratory judgment but denies the remaining allegations contained in Paragraph 9.

10. As to Paragraph 10, Plaintiff admits that it manufactures products bearing various trademarks but denies the remaining allegations contained in Paragraph 10.

11. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11 and, therefore, denies such allegations.

12. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 12 and, therefore, denies such allegations.

13. As to the allegations contained in Paragraph 13, Plaintiff admits Counterclaimants have purchased products bearing OtterBox trademarks and resold those OtterBox products on platforms including the Amazon Marketplace and eBay but denies having knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 13.

14. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 14 and, therefore, denies such allegations.

15. Plaintiff denies the allegations contained in Paragraph 15.

16. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 16 and, therefore, denies such allegations.

17. As to Paragraph 17, Plaintiff denies that “Counsel for OtterBox refused to provide proof of the products’ inauthenticity” and admits the remaining allegations contained in Paragraph 17.”

18. Plaintiff denies the allegations contained in Paragraph 18.

19. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 19 and, therefore, denies such allegations.

20. Plaintiff admits the allegations contained in Paragraph 20.

21. Plaintiff admits the allegations contained in Paragraph 21.

22. Plaintiff admits the allegations contained in Paragraph 22.

23. Plaintiff denies the allegations contained in Paragraph 23.

24. Plaintiff admits the allegations contained in Paragraph 24.

25. As to Paragraph 25, this is a summary of a lengthy letter that omits several key allegations and therefore Plaintiff denies the allegations contained in Paragraph 25.

26. As to Paragraph 26, this is a summary of a lengthy letter that omits several key allegations and therefore Plaintiff denies the allegations contained in Paragraph 26.

27. Plaintiff denies the allegations contained in Paragraph 27.

28. As to Paragraph 28, Plaintiff repeats and realleges the above responses contained herein.

29. As to Paragraph 29, Plaintiff admits that Counterclaimants seek a determination of the parties' respective rights and obligations regarding the purchase, distribution, marketing and resale of items bearing OtterBox trademarks but denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 29 and, therefore, denies such allegations.

30. As to Paragraph 30, Plaintiff admits that an actual controversy has arisen between Counterclaimants and OtterBox but denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 30 and, therefore, denies such allegations.

31. As to Paragraph 31, OtterBox admits that Counterclaimants seek a declaration but denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 31 and, therefore, denies such allegations.

32. As to Paragraph 32, Plaintiff repeats and realleges the above responses contained herein.

33. Plaintiff denies having knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 33 and, therefore, denies such allegations.

34. Plaintiff denies the allegations contained in Paragraph 34.

35. Plaintiff denies the allegations contained in Paragraph 35.

36. As to Paragraph 36, Plaintiff repeats and realleges the above responses contained herein.

37. Plaintiff denies the allegations contained in Paragraph 37.

38. Plaintiff denies the allegations contained in Paragraph 38.

39. Plaintiff denies the allegations contained in Paragraph 39.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

40. Defendants have failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

41. Defendants' claims are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

42. Defendants have failed to plead claims with the requisite particularity.

FOURTH AFFIRMATIVE DEFENSE

43. Defendants' claims are barred in this forum because they arise out of the same transaction or occurrence as the claims in a previously-filed, pending action between Plaintiff and Defendants in the United States District Court for Colorado.

FIFTH AFFIRMATIVE DEFENSE

44. Defendants' claims are barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

45. Defendants' claims are barred by estoppel.

SEVENTH AFFIRMATIVE DEFENSE

46. Defendants' claims are barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

47. Defendants' claims are barred by waiver.

NINTH AFFIRMATIVE DEFENSE

48. To the extent Defendants suffered any damages, which Plaintiff expressly denies, Defendants failed to take the steps necessary to mitigate the damages sustained.

TENTH AFFIRMATIVE DEFENSE

49. Plaintiff reserves the right to supplement or amend this answer, including through the addition of further affirmative defenses, based upon the course of discovery and proceedings in this action.

WHEREFORE, it is respectfully requested that Plaintiff be awarded the following:

- I. Defendants' Amended Counterclaim be dismissed in its entirety;
- II. Plaintiff be granted its costs, including attorneys' fees associated with defending the Amended Counterclaim; and
- III. Plaintiff be awarded any such other relief that the Court deems just and proper.

LEE LAW PLLC



Dated: January 23, 2019

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